Bail Slip

The Appellants/Accused 1.Raju, 2.Saradhi @Rajammal , were directed to be released on Bail in and by the order of this court dated 6.12.2000 made in Crl.Mp.No. 9094 of 2000 in Crl.A.No.1134 of 2000 on the file of the High court Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1134 of 2000

1.Raju
2.Saradh @ Rajammal .. Appellant/Accused

Vs.

State rep by
The Inspector of Police,
Pochampalli Police Station. .. Respondent/Complainant

Prayer:- This appeal has been preferred against the judgment dated 07.11.2000 made in S.C.No.192 of 1998 on the file of the III Additional Sessions Judge, Krishnagiri

For Appellant :Mr.C.R.Malarvannan

For Respondent :Mr.V.R.Balasubramaninan
Additional Public Prosecutor

JUDGMENT

The appellants, who have been charged under Section 419, 467 & 468 IPC, challenge their conviction and sentence of 2 years RI under Section 467 and a fine of Rs.1,000/- with default sentence and 2 years RI under Section 468 IPC with Rs.1000/- fine with default sentence and 2 years RI under Section 419 IPC passed in S.C.No.192 of 1998 on the file of the III Additional Sessions Judge, Krishnagiri, in this appeal.
bs

2.The case of the prosecution is that both A1 and A2 have forged an agreement of sale dated 18.6.1994 as though it was executed by one Thimiyammal, the aunt of A2, in order to grab at the property of the deceased Thimiyammal. The accused have also been charged under Sections 302, 404 & 201 IPC. But the trial Court has acquitted both the accused

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

against the charge under Section 302, 404 & 201 IPC on the ground that the prosecution has failed to prove the guilt of the accused under Section 302, 404 & 201 IPC.

3.After taking cognizance of the offence, the learned Judicial Magistrate, Uthangarai, had issued summons to the accused and on their appearance copies under Section 207 of Cr.P.C., were furnished to the accused and since the case is triable by the Court of Sessions, the learned Judicial Magistrate had committed the case under Section 209 of Cr.P.C., to the Court of Sessions. The learned Sessions Judge, who had tried the case, on appearance of the accused framed charges under Section 419, 467, 468, 302, 404 & 201 IPC and when questioned, the accused pleaded not guilty.

4.Before the trial Court P.W.1 to P.W.19 were examined and Ex.P.1 to Ex.P.32 were exhibited and M.O.1 to M.O.19 were marked.

5.P.W.1 is a nephew of the deceased Thimiyammal. He is the son of the complainant Raji Naidu. He would admit that the deceased Thimiyammal was the sister of Raji Naidu, his father, and that the deceased Thimiyammal was a widow and she had no issues and that he (P.W.1) and his sister A2 were brought up by the deceased Thimiyammal. He would admit that A1 is also the son of his another aunt to whom A2, his sister, was given in marriage. He would further admit that his aunt Thimiyammal was given in marriage to one Govindasamy as a second wife and when A1 tried to plough the land belonging to Thimiyammal, the son born to Govindarajan, husband of Thimiyammal, through his first wife obstructed and there is a civil suit pending between A1 and Murugesan, the son born to Govindarajan through his first wife. There was also a panchayat took place in this regard and in the panchayat it was decided that the land conveyed by Govindarajan in favour of the deceased Thimiyammal should be reconveyed in the name of Murugesan, the son born through the first wife of Govindarajan and it has further been resolved in the said panchayat that 50 cents of lands shall be conveyed in favour of A1 and also a sum of Rs.12,000/- to be given by Thimiyammal in favour of A1 for he having borne the medical expenses of Thimiyammal and her husband Govindarajan. He would further depose that his father came to his house at Hosur and enquired whether Thimiyammal came to his house and further informed that her whereabouts were not known for the past one week. According to P.W.1, the information he had received from his father was that on 17.6.1994, A1 had invited Thimiyammal to Hosur. He would further depose that his uncle Megalai Naidu also enqired about Thimiyammal with A1, but A1 had replied that his aunt Thimiyammal had already conveyed her land in his name, but he did not know the whereabouts of Thimiyammal. On suspicion his father had preferred Ex.P.1-complaint against the accused and that his father is also now no more. According to him, on 26.7.1994 he saw A1 in Burgoor police Station at about 9.00 am while he was giving confession statement before the Inspector of Police and that he also accompanied with the Inspector of Police and other witnesses along with A1 to the place of occurrence where he had identified the corpse of his aunt Thimiyammal

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

through the wearing apparels of the deceased and also identified the hair of Thimiyammal. M.O.1 & M.O.2 are the wearing apparels of Thimiyammal and M.O.3 is the hair of Thimiyammal. According to him, even while his aunt Thimiyammal was alive she had conveyed her ear-stud and gold thali chain weighing about 9 soverigns to A1.

6.P.W.2 has not supported the case of the prosecution.

7.P.W.3 is the then VAO of Parandampalli, who had recorded the statement of A1 on 29.6.1994 at about 12 noon. Ex.P.3 is the confession statement of A1. He has prepared Ex.P.4-report and handed over A1 to the police along with his confession statement. Ex.P.5 is the admissible portion of the confession statement of A1. M.O.4 & M.O.5, the ear stud and tholi were recovered from the house of A1 by the Inspector of Police in his presence under Ex.P.6-mahazar. Ex.P.7-document was also recovered from one Krishnan under Ex.P.8 in his presence by the Inspector of Police.

8.P.W.4, P.W.5 & P.W.6 have turned hostile.

9.P.W.7 is a witness in Ex.P.7-document alleged to have been forged by A1 and A2. He would identify Ex.P.10 & Ex.P.11 are his signatures. Thereafter, he has not supported the case of the prosecution. Hence, he was also treated as hostile witness.

10.P.W.8 is the person who had seen the corpse of the deceased Thimiyammal near Thima Goundanur, in a ucalyptus garden in a decomposed stage and that he immediately rushed to the Sikkarnapalli VAO and preferred Ex.P.12-complaint.

11.P.W.9 is the then VAO of Sikkarnapalli who would depose that on 20.6.1994 P.W.8 came to his office and informed about the lying of a corpse in a decomposed stage and that immediately he went there and saw the corpse and prepared Ex.P.13-report and thereafter informed the police and that the Sub-Inspector of police immediately rushed to the place where the corpse was lying and seized the lazer blade near the corpse.

12.P.W.12 is the doctor, who had conduced autopsy on the corpse of Thimiyammal and issued Ex.P.15-postmortem certificate.

13.P.W.11 is the retired Sub-Registrar. He was the sub-registrar of Uthangarai at the relevant point of time. He would admit that Ex.P.7 agreement of sale was registered in Uthangarai Sub-Registrar's office while he was working as the sub-registrar in the said office. He speaks about the procedure for registering a document. For registering Ex.P.7 both the vendor Thimiyammal as well as the vendee Raji have affixed the thump impression and signature respectively in the register maintained for the said purpose in his office. The said document Ex.P.7 was produced on 15.6.1994 and the same was registered on 20.6.1996 and both the parties along with the witnesses have signed in the document in his presence on 15.6.1994.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14.P.W.12 has not supported the case of the prosecution.

15.P.W.13, who knows about the accused as well as the deceased Thimiyammal, would admit that there are civil suit and criminal case pending between the A1, deceased Thimiyammal and Murugesan, the foster son of Thimiyammal. He also speaks about the panchayat which took place about 6 or 8 months before the death of Thimiyammal and that in the panchayat it has been decided that Thimiyammal shall give 50 cents of land to A1 and also Rs.12,000/- and another 90 cents of land to her foster son Murugesan.

16.P.W.14 is the postmortem constable, who had produced the corpse of Thimiyammal before the doctor, who had conducted the postmortem on 21.6.1994 and after the postmortem, P.W.14 had removed the saree, jacket and metti from the corpse and handed over the same to the Sub-Inspector of police. He has identified M.O.1 and M.O.2 as the saree and jacket removed from the corpse of Thimiyammal.

17.P.W.15 is the then Sub-Inspector of Police, Bargoor Police Station, who had received Ex.P.12 and Ex.P.13 viz. Extra-judicial confession statement of the accused and the report of the VAO, and registered the case against the accused under Cr.No.171 of 1994 under Section 174 of Cr.P.C. Ex.P.16 is the FIR. He had visited the place of occurrence and saw the decomposed corpse of the deceased Thimiyammal. Ex.P.17 is the rough sketch prepared by him. Ex.P.10 is the observation mahazar prepared by him in the presence of the witnesses. He has also recovered M.O.6-lazer blade under Ex.P.19 from the place of occurrence. Ex.P.20 is the inquest report. Ex.P.2 (series) are the photoes taken for the corpse. He had handed over the records to the Inspector of Police for further investigation.

18.P.W.16 is the then Inspector of Police at Pochampalli Police Station, to whom the deceased Raju Naidu had preferred Ex.P.1-complaint on 27.06.1994 at about 10.00 am. He had registered the case under Cr.No.183 of 1994 on the basis of Ex.P.1 as woman missing. Ex.P.22 is the FIR. Ex.P.21 is the endorsement made in the complaint. He had examined the witnesses and recorded their statements. On 29.6.1994 P.W.3-VAO had produced the accused at about 12 noon along with the extra-judicial confession statement recorded by him along with his special report. P.W.16 had altered the charge to section 302 IPC and prepared a copy of express FIR under Ex.P.23.

19.P.W.17 is the expert witness. He is working as an Inspector in Forensic Science Laboratory in the finger print wing. According to P.W.17, she had received some finger prints connected with this case for examination along with Ex.P.24-requisition from the Court. She has marked the finger prints in the sale agreement as D1 to D.4 and the admitted thumb impression in a vakalat as D5. She had marked the finger prints in the deed of compromise as D6. She has also assigned S1 to the left thumb impression of A2 and S2 to the left thumb impression of A1. She had compared the disputed thumb impression in D1 to D4 with that of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

admitted thumb impression of A1 and A2 in S1 and S2 and D5 and D6, and has opined that the disputed thumb impression in D1 to D4 belongs to A1 and A2. Ex.P.26 is the report submitted by P.W.17, the finger print expert.

20.P.W.18 is the Inspector of Police, who had conducted further investigation in this case. He had recorded the confession statement of A1 and seized his wearing apparels M.O.7 to M.O.9 and visited the place of occurrence and also perused the record relating to Cr.No.174 of 1994, which was registered under 174 of Cr.P.C., by the Bargoor police. He had received M.O.1 to M.O.4 seized by Bargoor police from the corpse. Witness Naidu has also identified M.O.1 to M.O.4 as the wearing apparels of the deceased. He has also seized M.O.4, a pair of ear stud under Ex.P.3-mahazar in the presence of the witnesses Kamalesan and Shanmugam. He has also recovered Ex.P.7-agreement from one Krishnan in the presence of the same witnesses under Ex.P.6-mahazar. He has also examined the witnesses and recorded their statements. He has received the file from the Bargoor police station relating to crime No.174 of 1994. Ex.P.26 is the letter of requisition given to the Forensic Science Laboratory for getting expert's opinion in respect of the disputed thumb impression in the sale agreement with that of the admitted thumb impression of the accused. Ex.P.23 is the expert's opinion and Ex.P.28 is the Serologist's report. He has arrested A2 on 23.11.1994 and recorded her confession statement in the presence of the witnesses Shanmugam and Annamalai and has produced A2 before the Magistrate for judicial remand. He has also received the documents connected with this case under Ex.P.30. Ex.P.31 is the letter of requisition addressed to the Judicial Magistrate for sending the material objects connected with this case for chemical examination.

21.P.W.19 is the Inspector of Police, who is a successor of P.W.18. After following the other formalities, P.W.19 has filed the final report against the accused under Section 467, 468, 302, 419, 404 & 201 IPC on 29.11.1996.

22.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., they denied their complicity with the crime. After going through the evidence both oral and documentary, the learned trial judge has come to the conclusion that the charge under Section 302, 404 and 201 IPC have not been proved against the accused, but the charge under Section 419, 467 & 468 IPC have been proved against the accused and accordingly convicted both A1 & A2 under Section 419 IPC and sentenced to undergo 2 years RI and convicted A1 & A2 under Section 467 IPC and sentenced to undergo 2 years RI and a fine of Rs.1000/- with default sentence and convicted A1 & A2 under Section 468 IPC and sentenced to undergo 2 years RI and to pay a fine of Rs.1000/- with default sentence. Aggrieved by the findings of the learned trial judge the accused have preferred this appeal.

23.Now the point for determination in this appeal is whether the conviction and sentence under Section 419, 467 & 468 IPC are sustainable or to be set aside for the reasons stated in the memorandum of appeal?

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

24.The Point:- 24(a) The impugned registered agreement of sale said to have been forged by A1 and A2 in the name of Thimiyammal, the deceased, is Ex.P.7. P.W.7 is the witness, who speaks about the registration of Ex.P.7 by A1 and A2. Even though P.W.7 was treated as a hostile witness he would admit in the chief examination that Ex.P.10 & Ex.P.11, signatures in Ex.P.7, belong to him. He would specifically state that only at the request of A1, he had signed in Ex.P.7 in two places. He has also identified Ex.P.7 as the document in which he has put Ex.P.10 & Ex.P.11 signatures. He would further depose to the fact that A1 had informed him that he is going to register a settlement and sale deed. In the cross-examination he would admit that only one document alone was registered on that date.

24(b)P.W.11 is the then Sub-Registrar of Uthangarai. He would admit that Ex.P.7, impugned document, was registered in his office. He would admit that both A1 and A2 have signed and affixed their thumb impression respectively in Ex.P.7 and that Ex.P.7-document was produced in the office on 15.6.1994 and registered on 20.6.1994. The prosecution has relied on the evidence of P.W.17, who is a finger print expert, who had compared the disputed finger prints in Ex.P.7, which were marked as D1 to D4 with that of the admitted finger prints of A1 & A2 in S1 & S2, and has given Ex.P.25-report. Basing on the evidence of P.W.17, P.W.11 & P.W.7 and also on the report of P.W.17 under Ex.P.25, the learned trial judge has come to the unassailable conclusion that the charges against the accused under Section 419, 467 & 468 IPC have been proved beyond any reasonable doubt.

24(c) The learned counsel appearing for the appellants Mr.C.R.Malarvannan relying on AIR 1963 SC 1572 (Dr.Vimla Vs. The Delhi Administration), would contend that to fasten with the liability under Section 467, 468 IPC it must be proved that the person affected must have been deceived and injured. The learned counsel would submit that the expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others, as held by the Honourable Apex Court in the above cited ratio, and that there is absolutely no evidence in this case to show that a person deceived had not deprived of any property, but only the accused have executed Ex.P.7, which is only a sale agreement and not a sale deed. The facts of the above cited ratio is that:

> "the appellant is the wife of one Siri Chand Kaviraj. On January 20, 1953, she purchased an Austin 10 Horse Power Car with the registration No.DLA-4796 from Dewan Ram Swarup in the name of her minor daughter Nalini aged about six month at that time. The price for the car was paid by Dr.Vimla. The transfer of the car was notified in the name of Nalini to the Motor Registration Authority. The car at that time was insured against a policy issued by the Bharat Fire and General Insurance Co., Ltd., and the policy was due to expire sometime in April, 1953. On a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

request made by Dewan Ram Swarup, the said policy was transferred in the name of Nalini. In that connection, Dr.Vimla visited the Insurance Company's Officer and signed the proposal form as Nalini. Subsequently, she also filed two claims on the ground that the car met with accidents. In connection with these claims, she signed the claim forms as Nalini and also the receipts acknowledging the payments of the compensation money as Nalini. On a complaint made by the company alleging fraud on the part of Dr.Vimla and her husband, the police made investigation and prosecuted Dr.Vimla and her husband Siri Chand Kaviraj in the Court of Magistrate 1st Class Delhi. Both the accused were charged under Section 120-B, 419, 467 & 468 of the Indian Penal Code. The learned Sessions Judge had acquitted both the accused on the ground that no case has been made out against them. The State had preferred an appeal before the High Court at Punjab, which also confirmed the order of acquittal passed by the trial Judge under Section 419 IPC, but set aside the order of acquittal under Section 467 & 468 IPC and accordingly convicted and sentenced both the accused till raising of the Court and to pay a fine of Rs.100/- with default sentence. Dr.Vimla has preferred an appeal before the Honourable Apex Court. While allowing the appeal preferred by Dr.Vimala, the Honourable Apex Court has observed as follows:-

> "the expression "defraud" involves two elements, namely deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.
>
> Now let us apply the said principles to the facts of the present case. Certainly, Dr.Vimla was guilty of deceit, for though her name was Vimla, she signed in all the relevant papers as Nalini and made the insurance company believe that her name was Nalini, but the said deceit did not either secure to her advantage or cause any non-economic loss or injury to the insurance Company. The charge does not disclose any such advantage or injury nor is there any evidence to prove the same. The fact that Dr.Vimla said that the owner of the car who sold it to her suggested that the taking of the sale of the car in the name of Nalini would be useful for income-tax purposes is not of any relevance in the present case, for one reason, the said owner did not say so, in his evidence and for the other, it was not indicated in the charge or in the evidence. In the charge framed, she was alleged to have defrauded the insurance company and the only

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

evidence given was that if it was disclosed that Nlini was a minor, the insurance company might not have paid the money. But as we have pointed out earlier, the entire transaction was that of Dr.Vimla and it was only put through in the name of her minor daughter for reasons best known to herself. On the evidence as disclosed, neither was she benefited nor the insurance company in curved loss in any sense of the term."

The above said dictum will not be applicable to the present facts of the case on hand because it has been proved in this case through P.W.17 and P.W.11 that A2, wife of A1, had signed in Ex.P.7 as impersonator of Thimiyammal, the deceased, as a vendor. A1 has signed in Ex.P.7 as a vendee so as to appear that Thimiyammal had executed the agreement of sale in respect of her property in favour of A1. Unfortunately in this case three days later Thimiyammal died under mysterious circumstance. Even in Ex.P.1-complaint preferred by the father of A2, it is clear that both A1 and A2 have an eye over the property of Thimiyammal. Only to get a wrongful gain and to make a wrongful loss to Thimiyammal both the accused have forged Ex.P.7-document. Under such circumstances, the conviction of A1 and A2 by the learned trial judge under Section 419, 467, & 468 IPC cannot be held to be erroneous.

24(d) The learned counsel appearing for the appellants relying on AIR 1976 SC 1139 (Krishan Lal Vs. State of Delhi), would contend that the offence alleged to have been committed by A1 & A2 is not so grave and hence some leniency can be shown on the accused regarding punishment. In the above cited dictum the accused who is a postal employee had forged the signature of a payee to get money order amount. The relevant observation in the above said dictum relied on by the learned counsel for the appellants is as follows:-

"It is also true, as observed by Mr.Justice Krishna Iyer in his order dated 8.7.1975 in the Special Leave petition (Criminal) No.586 of 1975 (SC) that "It is the lesser minions who get caught and purging public life of maxi-corruption by deterrent sentences is more desirable but less feasible." But at the same time it must be remembered that the gravity of offences such as this committed by public officials cannot be allowed to be minimised by misconceived judicial compassion. We do not think that in the circumstances of the case the sentence of six months' imprisonment imposed by the High Court can be said to be harsh or unjustified."

Relying on the above said dictum the learned counsel would contend that if this Court comes to the conclusion that the conviction of A1 & A2 under Section 419, 467 & 468 IPC cannot be set aside, then it may award lesser punishment of six months RI to both the accused. It is admitted that the deceased Thimiyammal is none other than the aunt of A2 and the fact remains that she was issueless widow having some properties. It is also admitted that the said Thimiyammal had a foster son by name Murugesan born through her husband through his first wife and that there was a civil dispute pending between the said Murugesan and A1, who made an attempt to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

plough the land belonging to Thimiyammal was obstructed by the said Murugesan. Under such circumstances, it is clear that only to grab at the property of Thimiyammal the accused have connived together and committed the crime. Even though they have been acquitted from the charge under Section 302 IPC, for want of evidence, for having committed the murder of Thimiyammal they have been rightly convicted by the learned trial judge on the basis of the evidence available against them under Section 419, 467 & 468 IPC. Taking into consideration the circumstances of the case and also the fact that A1 is now aged about 58 years and A2 is aged about 42 and also the representation made by the learned counsel that the accused are having a female child, I am of the view that some leniency can be shown on the sentence. Point is answered accordingly.

25.In the result, the appeal is dismissed confirming the conviction passed by the III Additional Sessions Judge, Krishnagiri, in S.C.No.192 of 1998, but the sentence alone under Sections 419, 467 & 468 IPC is modified to that of one year RI each instead of 2 years RI each respectively. In other respects the findings of the learned trial judge is hereby confirmed. The trial Court is directed to secure the accused and sent them to prison to undergo the unexpended portion of the sentence.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To,

1.The III Additional Sessions Judge,
Dharmapuri at Krishnagiri.
2.-do-The District and Sessions Judge,
Dharmapuri at Krishnagiri.
3.The Judicial Magistrate, Uhangarai.
4.-do-The Chief Judicial Magistrate,
Krishnagiri.
5.The Public Prosecutor, High Court,
Madras.
6.The Inspector of Police,
Pochampalli Police Station.

1 cc to Mr.N.Mohideen basha Advocate SR.NO.42606

AKR(co)
RD 24.7.07

Crl.A.No.1134 of 2000

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/